

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

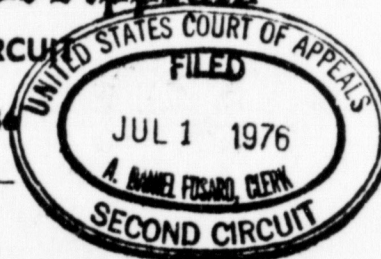
Affidavit
76-6086

To be argued by
STUART I. PARKER

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6086



CARL EDELSON,

Plaintiff-Appellant,

—v.—

DEPARTMENT OF HEALTH, EDUCATION and
WELFARE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF FOR DEFENDANT-APPELLEE, DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE**

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**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 76-6086

CARL EDELSON,
Plaintiff-Appellant,

—v.—

DEPARTMENT OF HEALTH, EDUCATION and WELFARE,
Defendant-Appellee.

**BRIEF FOR DEFENDANT-APPELLEE, DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE**

Preliminary Statement

Plaintiff-Appellant, Carl Edelson, brought this action to recover the social security taxes which he had paid throughout his working life. In a memorandum decision, dated May 5, 1976, Judge Gagliardi granted the defendant-appellee's motion for judgment on the pleadings and dismissed Mr. Edelson's complaint. Mr. Edelson now appeals that final determination to this Court.

Issue Presented

Did the District Court properly dismiss Mr. Edelson's complaint?

Statement of the Case

Mr. Edelson, who is 64 years old, commenced this action on October 7, 1975 to recover in one lump sum the old-age, survivors, and disability ("social security") taxes imposed upon his income pursuant to the Federal Insurance Contributions Act ("F.I.C.A."), 26 U.S.C. §§ 3101 et seq. On March 10, 1976, the Government moved for judgment on the pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, and on May 5, 1976, Judge Gagliardi granted the Government's motion.*

ARGUMENT

MR. EDELSON'S COMPLAINT DOES NOT STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As Judge Gagliardi noted "[t]he essence of Mr. Edelson's complaint is that since he is willing to forego social security benefits for the rest of his life, he should now be permitted to withdraw from the United States Treasury all monies which he paid to it in social security taxes." (Addendum, a-1) Apparently, Mr. Edelson considers his social security tax payments to be the same as employee contributions to a private pension plan and believes that he has a vested or contractual right to receive from the Government a sum equal to the social security taxes he has paid. Thus, he contends that the Social Security Act, 42 U.S.C. §§ 401 et seq., and F.I.C.A., 26 U.S.C. §§ 3101 et seq., are unconstitutional to the extent that they deprive him of choosing the time (now) and the manner (a lump sum payment) in which he will receive the sum to which he claims to be entitled.

* A copy of Judge Gagliardi's memorandum decision and order is annexed hereto as an Addendum.

Mr. Edelson's arguments ignore the holdings of the Supreme Court in *Helvering v. Davis*, 301 U.S. 619, 640-45 (1937); *Flemming v. Nestor*, 363 U.S. 603, 608-11 (1960); and *Richardson v. Belcher*, 404 U.S. 78, 80 (1971). See also *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937). These cases leave no question that Mr. Edelson does not have a property interest in the social security taxes he has paid or a right to dictate the time or manner in which he will receive social security old-age benefits.

In *Flemming v. Nestor*, *supra* at 609-10, Mr. Justice Harlan noted that:

The Social Security system may be accurately described as a form of social insurance, enacted pursuant to Congress' power to "spend money in aid of the 'general welfare,'" *Helvering v. Davis*, *supra*, at 640, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. Plainly the expectation is that many members of the present productive work force will in turn become beneficiaries rather than supporters of the program. But each worker's benefits, though flowing from the contributions he made to the national economy while actively employed, are not dependent on the degree to which he was called upon to support the system by taxation. *It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.* (Emphasis added)

As Judge Gagliardi pointed out, F.I.C.A. taxes are like any other taxes imposed by the Government. They

"must be paid whether or not the taxpayer wishes to avail himself of the public benefits on which the revenues derived from the tax are spent. . . . Payment of the tax does not give the taxpayer any contractual or other rights to the revenues collected. . . ." (Addendum, a-2) Accordingly, Mr. Edelson's claim that he is entitled to a lump sum payment of the social security taxes he has paid must be rejected.

CONCLUSION

The decision appealed from, granting judgment on the pleadings dismissing the complaint, should be affirmed.

Respectfully submitted,

ROBERT B. FISKE, JR.,
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Southern District of New York,
Attorney for Defendant-Appellee,
Department of Health, Education
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STUART I. PARKER,
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ADDENDUM

Memorandum Decision of Gagliardi, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

75 Civ. 4937

CARL EDELSON,

Plaintiff,

—against—

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
and SOCIAL SECURITY ADMINISTRATION,

Defendants.

GAGLIARDI, D. J.

Carl Edelson, the 64 year old pro se plaintiff, sues to recover social security taxes which he has paid throughout his working life. The essence of Mr. Edelson's complaint is that since he is willing to forego social security benefits for the rest of his life, he should now be permitted to withdraw from the United States Treasury all monies which he paid to it in Social Security taxes. The government has moved pursuant to Rule 12(c), Fed. R. Civ. P. for judgment on the pleadings. Both sides admit there is no genuine issue of material fact and that the question raised by the complaint is merely a legal one.

Although this Court has some sympathy for Mr. Edelson's feeling that he should be entitled retroactively to opt out of the Social Security system, this certainly is not what Congress intended. 26 U.S.C. § 3101, which imposes the social security tax on employees, is clearly a tax not a voluntary contribution which may be withdrawn at an employee's option. Like any other tax imposed by the federal government, it must be paid whether or not the taxpayer wishes to avail himself of the public

benefits on which the revenues derived from the tax are spent. The constitutionality of this particular tax was sustained by the United States Supreme Court in *Helvering v. Davis*, 301 U.S. 619 (1937) two years after it was first enacted. As Justice Cardozo there stated:

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here is with power, not with wisdom. . . . When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress. . . . 301 U.S. at 644-45.

Here Congress has decided to impose a tax on employees' wages for the purpose of obtaining revenues to fund a social security system. Payment of the tax does not give the taxpayer any contractual or other rights to the revenues collected except as provided by the Social Security Act, 42 U.S.C. § 401 et seq. (1974), and related statutes. *Fleming v. Nestor*, 363 U.S. 603, 608-11 (1960); *Richardson v. Belcher*, 404 U.S. 78, 80 (1937). While Congress could have made participation in the Social Security System optional, it did not choose to do so.

Defendant's motion for judgment dismissing plaintiff's complaint pursuant to Rule 12(c), Fed. R. Civ. P. is thus granted.

So Ordered.

/s/ LEE P. GAGLIARDI
U.S.D.J.

Dated: New York, New York
May 5, 1976.

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

CA 76-6086

deposes and says that ^{Marian J. Bryant} she is employed in the Office of the United States Attorney for the Southern District of New York, being duly sworn,

That on the
1st day of July, 1976 s he served a copy of the
within Brief for Deft-Appellee, Dept of Health, Education and
Welfare
by placing the same in a properly postpaid franked envelope
addressed:

Carl Edelson
151 West 16th Street
New York, New York 10011

And deponent further says s he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

Marian L. Bryant

1st day of July, 19 76

Joseph S. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977